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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Japan: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Japan.

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Please recycle

Report of the Special Rapporteur the promotion and protection of the right to freedom of opinion and expression on his mission to Japan: comments by the State*

Response to recommendations

The draft report of Mr. David Kaye, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, on the situation of freedom of expression in Japan which is to be submitted to the Human Rights Council was shared with the Government of Japan. The Government of Japan understands that in his draft report the Special Rapporteur delivers his own opinion on the recent situation of freedom of expression in Japan, in relation to areas such as Article 4 of the Broadcast Act, the Specially Designated Secrets Act, and hate speech.

However, as for the facts pointed out in the draft report, most of them are based on hearsay information or assumptions and do not show any verification of the details of related information. Based on these facts, the recommendations written in the draft report regrettably contain inaccurate and insufficient statements on the actual situation in Japan and Japanese culture, as well as arguments not based on objective information. It is hard for the Government of Japan to avoid expressing sincere regret concerning those biased recommendations. The Government of Japan requests the Special Rapporteur to read carefully the details of this document provided below.

Last December, the Government of Japan provided information as preliminary comments about the Special Rapporteur's document distributed at the press conference regarding his visit for investigation in Japan from 12 to 19 April 2016. In the preliminary comments, the Government of Japan requested that the final report of the Special Rapporteur to be submitted to the Human Rights Council in June 2017 be based on objective facts and analyses and gave governmental views sincerely on the cases pointed out in the document distributed at the press conference. However, it is very regrettable that the draft report was shared without taking into consideration the information provided in the form of comments from the Government of Japan.

The Government of Japan has supported the Special Rapporteur from the time of his visit for investigation in Japan to the preparation of his draft report, and the Special Rapporteur has expressed his gratitude to the Government for the support he received. Despite this cooperation, it would be very regrettable, if the Special Rapporteur issues those recommendations. On this occasion, the Government of Japan would like to stress that there are strong concerns in Japan that issuing recommendations that are not based on objective facts or analyses but on hearsay information or assumptions as UN documents degrades significantly the authority of the UN Human Rights Council.

The Government of Japan intends to continue dialogues with the Special Rapporteur in order to facilitate the understanding on the actual situation of Japan. On the other hand, the Government strongly requests the Special Rapporteur to take into consideration the information provided by the Government below in preparing his final report and to refrain from repeating a similar approach in future work.

* Reproduced as received.

1. Partners whom the Special Rapporteur met with during his visit

[Paragraph 2]

The information provided in the paragraph is not accurate. The sentence in paragraph 2 "During his visit, the Special Rapporteur met with …the State Minister of Justice…." should be replaced as follows: "During his visit, the Special Rapporteur met with …the State Minister of Justice **who is also the State Minister of the Cabinet Office**…."

This is because State Minister of Justice Moriyama is also the State Minister of the Cabinet, who is responsible for the Specially Designated Secrets Act.

Please modify the last sentence in paragraph2 by adding "the Personal Information Protection Commission," which is one of the organizations the Special Rapporteur met on April 15, 2016. Our suggestion is as follows, "He also met representatives from Cabinet Intelligence and Research Office, … , **and** the Ministry of Education, Culture, Sports, Science and Technology, **and Personal Information Protection Commission**.

2. The suspicion that the Japanese government ordered intelligence community members to monitor a member of civil society who helped coordinate civil society meetings during the visit

[Paragraph 5]

The Japanese government did not attempt to surveille the activities of the person who helped coordinate civil society meetings during the Special Rapporteur's visit to Japan.

3. Media Independence

[Paragraphs 6, 9-14]

Freedom of expression is guaranteed by Article 21 of the Constitution of Japan. It constitutes the political foundation of a democratic nation and is one of the most important fundamental human rights for the people in Japan. It cannot be restricted unjustifiably even by laws. In Japan, freedom of expression is fully guaranteed.

The Special Rapporteur expresses concerns on media independence, referring to certain remarks and behaviors of Government of Japan officials and members of the Japanese ruling party. However, freedom of expression including media independence is fully guaranteed by the Constitution of Japan and there is no such fact that Government of Japan officials and members of the Japanese ruling party have put pressure on journalists illegally and wrongfully. Therefore, we cannot support the Special Rapporteur's claims. With regard to the cases where the Special Rapporteur expressed concerns on media independence, most of them seem to be based on hearsay information or assumptions and the Special Rapporteur does not show any verification of the details of related information. The Government of Japan requests that the final report of the Special Rapporteur to the Human Rights Council be based on objective facts and analyses.

The Broadcast Act has been established within a framework based on the autonomy and independence of broadcasters, and it ensures broadcasters enjoy one of the most free media circumstances in terms of such factors as prudence in taking actions for the breach of program rules.

Freedom of expression, including that of press, is one of the fundamental human rights guaranteed by the Constitution of Japan, and the Government of Japan has obviously given every respect for these rights in applying the Broadcasting Act. We find it truly disappointing to see overall descriptions based on an impression that the Government of Japan is not in favor of the freedom of expression, and thus request that the Special Rapporteur make his descriptions accurate and factual.

In addition, the Special Rapporteur emphasizes the existence of such articles as 174 of the Broadcasting Act and 76 of the Radio Act in the context of pressures on media. This is inappropriately described as the final report to the United Nations as it does not reflect our circumstances truthfully on the following points:

The Ministry of Internal Affairs and Communications, has continued to take the view that the suspension of the operations of broadcasting in accordance with Article 174 of the Broadcast Act or the suspension of the operation of radio stations in accordance with Article 76 of the Radio Act in the case that a broadcast was made in violation of Paragraph 1, Article 4 of the Broadcast Act should apply only in very limited circumstances, complying with all the following conditions.

(a) It is clear that a broadcast in violation of the provisions of the laws was aired.

(b) Furthermore, the broadcast harmed public interests and it was contrary to the purpose of the Broadcast Act, and it is necessary to prevent the recurrence of such a broadcast in the future.

(c) In addition to the above conditions, the same broadcaster repeats a similar act, the broadcaster's measures to prevent the cause and recurrence of such a broadcast are insufficient, and the self-regulation of the broadcaster is not expected to ensure broadcasting in compliance with the laws.

Ministry of Internal Affairs and Communications has continued to maintain the opinion that this provision should be administered with very careful consideration, and successive Ministers for Internal Affairs and Communications have made remarks in line with Ministry of Internal Affairs and Communications's conventional view, as well.

We draw your attention to the fact that there are countries that have independent regulatory agencies and specify criminal penalties or fines imposed by administrative agencies on broadcasters in case of breaching program rules and that those penalties or fines have been in practice. In contrast, there are no such criminal penalties or fines in such cases in Japan.

This is because the Broadcast Act has been established within a framework based on the autonomy and independence of broadcasters, and broadcasters are expected to observe the Act independently.

With the abovementioned fact in mind that other countries have put in place even more severe program rules than Japan, the Special Rapporteur's claim that the jurisdiction of Ministry of Internal Affairs and Communications over broadcasting administration gives rise to pressure on the media has no basis in fact.

Freedom of expression is one of the basic human rights guaranteed by Article 21 of the Constitution of Japan, and Article 1 of the Broadcast Act stipulates that one of the purposes of the Act is "to ensure freedom of expression through broadcasting by guaranteeing the impartiality, truth and autonomy of broadcasting."

Furthermore, Article 3 of the Broadcast Act stipulates that "broadcast programs shall not be interfered with or regulated by any person except in cases pursuant to the authority provided for in laws," thus guaranteeing freedom of broadcast program editing.

To be specific, the Broadcast Act includes the following provisions in order for broadcasters to achieve the appropriateness of its broadcast programs.

(a) The broadcaster shall stipulate standards for the editing of the broadcast programs and shall edit the broadcast programs in accordance with such (Paragraph 1, Article 5).

(b) The broadcaster shall establish a deliberative organ for broadcast programs in order to discuss necessary matters for ensuring the appropriateness of the broadcast programs (Article 6).

The Broadcast Act properly ensures freedom of expression and independence in broadcasting within its framework, and the Special Rapporteur's assertion of "a weak system of legal protection" is incorrect.

[Paragraph 13]

The sentence in paragraph 13 "As an example, in January 2017, the Court rejected a ··· the man's right to privacy, given the serious nature of his crimes." should be deleted.

This is because the summary of the order of the Supreme Court quoted by the report is not precise. Firstly, the order did not include the judgment which rejected the argument regarding the 'right to be forgotten'. In addition, the court did not explicitly mention the 'right to know' either.

[Paragraph 17]

Chapter V THE CABINET of the Constitution of Japan stipulates that executive power shall be vested in the Cabinet and sets forth a parliamentary system of government, thus specifying that each Minister as a member of the Cabinet shall be responsible for the administration of areas under the jurisdiction of the Minister.

There is remarkable technological innovation along with vigorous international competition in the field of information and communications, in particular, to which a national strategic response is required. Accordingly, a structure in which the Minister is responsible for promptly executing administrative matters under the Ministry's exclusive system to ensure a flexible, integrated, and comprehensive response was introduced.

There was a time when administrative committees were introduced widely in Japan after World War II. However, many of them were abolished in and after 1952 for reasons such as vagueness of their responsibilities.

The idea of establishing an independent regulatory authority covering broadcasting in Japan has been strongly opposed by the representatives of the Japan Commercial Broadcasters Association, stating that it would be difficult to establish an organization irrelevant of political interference and that the establishment might strengthen regulation over broadcasters.

The ideal state of broadcasting administrative organizations varies with the circumstances of each country, and in that regard, the Special Rapporteur's assertion that "Under international standards, broadcast regulation should be conducted by an independent third-party actor" needs to be reviewed since there are no such global standards.

And we are aware that many countries have regulations similar to program rules specified by the Broadcast Act of Japan.

As we mentioned earlier, there are countries that have penalties or fines on broadcasters in violation of program rules which Japan does not have, and therefore the Special Rapporteur's criticism over our legal framework is groundless.

[Paragraph 19]

We are aware that there are countries that have independent regulatory agencies and specify criminal penalties or fines imposed by administrative agencies on broadcasters in violation of program rules and that those penalties or fines have been in practice. In contrast, there are no such criminal penalties or fines with respect to cases in violation of the program rules in Japan.

This is because the Broadcast Act has been established within a framework based on the autonomy and independence of broadcasters, and broadcasters are expected to observe the Act independently.

The Government of Japan does not have any information which underpins the Special Rapporteur's assertion that "the possibility of government interference based on content or affiliation" "looms as a threat over the media, possibly deterring investigations that could run afoul of political sensitivities," and in fact there were no cases in which Article 174 of the Broadcast Act or Article 76 of the Radio Act were applied as a result of a violation of Article 4 of the Broadcast Act.

[Paragraph 20]

From the viewpoint of ensuring freedom of expression, the Broadcast Act rules freedom of program editing by stipulating that "broadcast programs shall not be interfered with or regulated by any person except in cases pursuant to the authority provided for in laws," thus forming a mechanism to achieve the appropriateness of broadcast programs according to the autonomy and independence of broadcasters.

Therefore, broadcast programs are to be edited by broadcasters on their own responsibility, and broadcasters are to comply with the Broadcast Act independently and autonomously.

With regard to the program rules specified in Paragraph 1, Article 4 of the Broadcast Act, broadcasters are to determine whether their broadcast programs comply with the program rules first.

From its standpoint as the ministry with jurisdiction over the Broadcast Act, Ministry of Internal Affairs and Communications has been taking the view that it should apply the Broadcast Act, if necessary, with very careful consideration so as not to limit legitimate freedom of expression.

The Broadcasting Ethics & Program Improvement Organization (BPO) was voluntarily established by Japan Broadcasting Corporation (also called NHK) and the Japan Commercial Broadcasters Association (JBA) in July 2003 in order to act promptly and precisely from the standpoint of an independent third party, and to contribute to the enhancing of broadcasting ethics and accurate broadcasting. Ministry of Internal Affairs and Communications recognizes that the activities of BPO are in any case conducted as a part of the autonomous efforts of broadcasters, and therefore, broadcasters are ultimately responsible for their broadcast programs regardless of any decisions made by the BPO.

Meanwhile, from its standpoint as the Ministry with jurisdiction over the Broadcast Act, Ministry of Internal Affairs and Communications has continued to take necessary measures.

It is clear that BPO, a private entity that broadcasters have voluntarily set up, cannot make any interpretation of the Broadcast Act in a legally binding way, and we are not aware of any cases where private entities do so in other advanced economies either. Also, as we stated earlier, it is inappropriate to have an independent regulatory body in broadcasting in Japan's situation.

With regard to measures that involve administrative guidance, Ministry of Internal Affairs and Communications has been carefully considering each individual circumstance before taking action.

[Paragraph 21]

The remarks of the Minister for Internal Affairs and Communications in the Budget Committee of the House of Representatives on February 8, 2016 were made as a response to a question on the possibility of application of provisions relating to the business suspension order stipulated in Article 174 of the Broadcast Act or the operation suspension order stipulated in Article 76 of the Radio Act in the case that a broadcast was made in violation of Paragraph 1, Article 4 of the Broadcast Act. The minister's response was an explanation of Ministry of Internal Affairs and Communications' conventional

interpretation of the framework of the Act. A similar response had been made under the regime of the Democratic Party of Japan as well.

Past Ministers for Internal Affairs and Communications responded similarly from the viewpoint of the continuity of administration, and the remarks of Ms. Sanae Takaichi, Minister for Internal Affairs and Communications were not different from those of past Ministers.

It should be noted that there were no cases in which Article 174 of the Broadcast Act or Article 76 of the Radio Act were applied as a result of a violation of Article 4 of the Broadcast Act.

In any case, the Broadcast Act has a framework based on the autonomy and independence of broadcasters, and broadcast programs should be edited by broadcasters at their own responsibility in accordance with the Broadcast Act.

Moreover, we would reiterate that Ministry of Internal Affairs and Communications has long been of the opinion that in case of a violation of Article 4 of the Broadcast Act Article 174 of the Broadcast Act and Article 76 of the Radio Act should be administered with very careful consideration.

[Paragraph 22-24]

The Special Rapporteur expresses concerns on media independence, referring to certain remarks and behaviors of Government of Japan officials and members of the Japanese ruling party. However, freedom of expression including media independence is fully guaranteed by the Constitution of Japan and there is no such fact that Government of Japan officials and members of the Japanese ruling party put pressure on journalists illegally and wrongfully.

[Paragraph 25]

Since the remarks of the Ministry for Internal Affairs and Communications were made in the Diet on February 8, 2016, some media houses have reported that the resignation of broadcasters and commentators from long-term positions is associated in some way with the remarks. We understand that the program reorganization, including the departure of certain broadcasters, had been decided before the opening of the Budget Committee in February. Therefore, references to an environment hostile to or fearing the consequences of criticism of the Government are irrelevant.

[Paragraph 26]

NHK is Japan's public broadcaster funded by reception fees, which are paid by every household with a television set. From this point of view, some operations of NHK are subject to approval from the Diet, which is composed of national representatives. For example, the members of the Board of Governors are appointed by the Prime Minister with the consent of the Diet. Furthermore, NHK's budget, which is submitted by the Minister for Internal Affairs and Communications with the Minister's opinion attached, should be approved by the Diet.

Therefore, the line which states "the Diet appoints the members of NHK's Board of Governors" is a factual error.

We understand that similar systems exist in other countries. For example, in the United Kingdom, we are aware that the Queen is to appoint the members of the BBC Trust in accordance with the recommendation of the Government, and in France the budget of French public broadcasting requires approval from the Parliament and some members of the Council of Administration are designated/nominated by the Parliament or the Government.

Meanwhile, the Broadcast Act has a framework which respects the autonomy and independence of broadcasters, and, under the framework, those broadcasters edit programs on their own responsibility.

Accordingly, we understand that NHK as well as other broadcasters are to edit programs on their own responsibility and independently and autonomously observe the Broadcast Act.

The Special Rapporteur's assertion that NHK's lack of independence and the Government's pressure influences programs and media selection are not based on a proper understanding of the situation.

Out of the Special Rapporteur's reference to the interview with a certain NHK employee, the allegation that NHK had conducted an internal investigation and that it had not made public its results is not true as we checked with NHK that it had never conducted such an internal investigation. We would be disappointed if the Special Rapporteur should unilaterally publicize to the United Nations his report, which is critical of Japan's media environment based on misunderstood information, and thus we request its review.

[Paragraph 27]

The Special Rapporteur expresses concerns on media independence, referring to certain remarks and behaviors of Government of Japan officials and members of the Japanese ruling party. However, freedom of expression including media independence is fully guaranteed by the Constitution of Japan and there is no such fact that Government of Japan officials and members of the Japanese ruling party put pressure on journalists illegally and wrongfully.

The Special Rapporteur's assertion that "the pressures on the broadcast media have a definite spillover effect on print" is not true, because the interpretation and application of the Broadcast Act do not exert any pressures over broadcasters, and the print and broadcast media have been active independent of each other in Japan. We request that a review be conducted of assertions based on factual errors.

[Paragraph 65]

Freedom of expression is guaranteed by Article 21 of the Constitution of Japan, and Article 12 and Article 13 of the Constitution respectively specify that "The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare," and "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs." Furthermore, Article 1 of the Broadcast Act reads, "The purpose of this Act is to regulate broadcasting so as to conform to public welfare and to achieve its sound development."

Article 4 of the Broadcast Act was established in light of the purpose of the provisions of the Constitution.

We are aware that many countries have regulations similar to program rules specified by the Broadcast Act of Japan and that there are countries that specify criminal penalties or fines imposed by administrative agencies on broadcasters in violation of program rules and that those penalties or fines have been imposed in practice. In contrast, there are no such criminal penalties or fines with respect to cases in violation of the program rules in Japan.

The reason is that the Broadcast Act has been established within a framework based on the autonomy and independence of broadcasters, and we expect broadcasters to observe the Act under the framework.

Therefore, we consider that the program rules similar to those of other countries specified in the Broadcast Act are necessary, and we do not agree with the recommendation of repeal of Article 4 and of the Government getting itself out of the media regulation business.

With regard to the recommendation on the independent regulatory authority, we reiterate that it is not appropriate in light of Japan's situation as for instance it is opposed by Japan's broadcasters themselves. The Government of Japan strongly urges the Special Rapporteur to make recommendations based on the realities and background of the visited countries.

4. Interference in the Communication/Expression of History

[Paragraph 37]

With regards to school education, the Courses of Study (national curriculum standards), which is the standard for the design of the school curriculum based on the law, requires that students should be taught to understand that World War II caused tremendous suffering to humanity at large. Regarding textbooks produced in the private sector, the judgement as to what kind of specific matters to include and how they are described in a textbook is left to the particular textbook publisher as long as the contents are based on the Courses of Study (national curriculum standards) and do not contain errors. In addition, some textbooks do mention the comfort women.

[Paragraph 38]

The information has factual mistakes. In fact, there are about 150 members on the Textbook Authorization Research Council, and among them, about 30 members are in charge of social studies textbooks.

[Paragraph 40]

The information has factual mistakes. In fact, among the junior high school history textbooks used from 2006 to 2011, one textbook contained a description of the comfort women. Moreover, although there were no descriptions of the comfort women in the textbooks used from 2012 to 2015, among the textbooks that have been used since 2016, one textbook contains a description of the comfort women.

Regarding textbooks produced in the private sector, the judgement as to what kind of specific matters to include and how they are described in a textbook is left to the particular textbook publisher as long as the contents are based on the Courses of Study (national curriculum standards) and do not contain errors.

[Paragraphs 41, 42, 69]

Regarding textbooks produced in the private sector, the judgement as to what kind of specific matters to include and how they are described in a textbook is left to the particular textbook publisher as long as the contents are based on the Courses of Study (national curriculum standards) and do not contain errors.

The basic purpose of the textbook authorization is to identify any errors in the textbook descriptions in light of the results of objective academic research and appropriate materials at the time of the authorization, and the authorization is conducted based on the Courses of Study (national curriculum standards) and Textbook Authorization Standards. In other words, the textbook authorization is carried out by the Textbook Authorization Research Council based on the results of professional and academic research and deliberation. The results of the examination are utilized as they are by the Minister of Education, Culture, Sports, Science and Technology when judging whether to authorize a particular textbook or not. This authorization mechanism does not allow intervention by government policy or political intent or motivation.

5. The Specially Designated Secrets Act

A. The scope of specially designated secrets designation

[Paragraphs 43, 44, 45]

In the Specially Designated Secrets Act (hereinafter referred to as SDS Act), information designated as SDS is limited to the matters set forth in the appended table of four areas with 23 items. To prevent arbitrary designation, the four areas with 23 items are divided into 55 sub-items in the Standards for Uniform Implementation of the Act on the protection of Specially Designated Secrets, which was formulated based on the opinions of the members of Council for Protection of Information.

As we mentioned above, those 23 items and 55 sub-items stipulated in the Standards for Uniform Implementation of the Act defines the type of information which should be designated as SDS concretely and correctly, which prevent the Japanese government from designating vague and broad information as SDS. Therefore, the comment in the report that the Act contains a vague and broad definition of the matters that can be classified as SDS is not true.

Even before the enactment of the Act, the National Public Service Act required public servants to protect certain information as official secrets. After the enactment of the Act, strictly limited kinds of information among those official secrets are designated as SDS. Therefore, we cannot support the Special Rapporteur's claims that enactment of the Act has led to an expansion of the scope of secrets, preventing information which used to be disclosed from disclosure, or putting in peril the public's right to know.

B. Penalties

[Paragraphs 44, 47, 48]

Information gathering activities performed by journalists are not punished in the Act. The judgment of the Supreme Court of Japan on May 31st, 1978 states, "the patient and persistent persuasion or request to a government official by the press essentially lack illegality and shall be treated as lawful activities in the pursuit of business as long as they are truly for the purpose of news reporting and are generally accepted by society as an appropriate measure, within the entire spirit of the law." In respect of the judgment above, the Act stipulates that the information gathering activities by persons engaged in publishing or news reporting shall be treated as lawful activities in the pursuit of business if they are conducted solely for the purpose of promoting the public interest and when they are not found to have been performed through violation of laws or regulations or by extremely unreasonable means. In other words, the information gathering activities shall be treated as lawful activities in Article 35 of the Criminal Law, and shall not be punished. This judgement also says "the use of extremely unjustifiable ways", which is stipulated in Paragraph 2, Article 21 of the Act, means the ways which impair substantially the personality of an individual who is the object of news gathering activities. This was clearly mentioned in the past Diet discussion.

The official commentary on the Act, which is available online, concretely enumerates the examples of "lawful activities in the pursuit of business" by persons engaged in news reporting as follows: (a) a visit to persons engaged in the duty of handling SDS without any appointment in the early morning or in the middle of the night, (b) repeated attempts of contact by email, phone or direct visits, (c) communication with each other or dining together based on a private relationship, (d) accidental glance at SDS on a screen or in print in a room that one happens to enter, (e) turning over a sheet of paper that had been left blank side up and unattended, taking a glance at or taking a photo of that paper, (f) touching a keyboard to activate a computer on a power saving mode to view a screen which displays data not protected by passwords, (g) interviewing persons who handle SDS or persons who

are closely associated with those who handle SDS, (h) interviewing persons in sections which are closely related to sections handling SDS, (i) interviewing politicians who have come to know SDS, (j) interviewing a family member of persons handling SDS, (k) interviewing employees of eligible contractors which deal with SDS.

Therefore, the Act does not have any negative effect on the activities of journalists. As a fact, though almost two and a half years have passed since the Act has been enforced, we have not recognized any facts that news gathering activities have been daunted by the Act.

The sentence in paragraph 48 "The Special Rapporteur was pleased to hear from officials that the Government does not intend to apply Article 25's harsh penalties to journalists and that the **unknowing** disclosure of information by journalists will not be punished as long as the information is in the public interest and is acquired in the good faith and lawful pursuit of journalism." should be replaced as follows: "The Special Rapporteur was pleased to hear from officials that the Government does not intend to apply Article 25's harsh penalties to journalists and that **any** disclosure of information by journalists will not be punished as long as the information is in the public interest and is acquired in the good faith and lawful pursuit of journalism."

Information gathered by journalists for the sole aim of furthering the public interest is not regarded as penalty subject. It does not matter whether the journalists know the information is SDS or not.

C. The Oversight Mechanism

[Paragraphs 50, 77]

The Board of Oversight and Review of Specially Designated Secrets is established independently in the House of Representatives and in the House of Councilors. During the last year, the committee of the Board in the House of Representatives was held 12 times and the committee of the Board in the House of Councilors was held10 times. To comply with requests from committees through discussion with them, we have disclosed 7 SDSs to the Board in the House of Representatives. Therefore, we consider that the comment that "the committees are left without sufficiently specific information to determine whether the designation of information as secret was appropriate" is incorrect.

The Cabinet must issue the statement to deny the Board's request with the resolution of the Board. This statement has been issued only once in the last 70 years, which shows the difficulty for the government to deny the request from the Diet.

In Paragraph 6 Article 102 of the Diet Law, the Board can request the Head of the Administrative Organ to report the measures taken by the Administrative Organ for the recommendation from the Board.

In the Act, it is provided that the government holds the Council for Protection of Information, which consists of representatives of third parties from the media, judicial circles, academia and public business sectors and takes technical and objective opinions from the members. Also, in the Cabinet Office, the Inspector General for Public Records Management (Information Security Oversight Division), is established to independently and fairly verify and inspect whether Administrative Organs properly designate and terminate SDS, and manage and dispose of administrative documents as well.

Therefore, a multi-layered structure which ensures appropriate implementation of the Act is established.

D. Reaction to the points made by the Board of Oversight and the results of the Review of Specially Designated Secrets

[Paragraph 51]

The Government has explained sufficiently to the Board from the first year of the Act's enforcement, and we will seek further explanation hereafter. In the report from the Board of the House of Representatives issued in 2017, the chairman of the Board, appreciates that the government's actions for the Board have been increasingly positive.

The sentence in paragraph 51 "The boards examined a total of 382 cases in which 10 government organizations designated approximately 189,000 pieces of information as state secrets." should be replaced with the following: "The boards examined a total of 382 SDSs designations which covers 189,000 pieces of SDSs documents".

The figure 382 is a total of SDSs which 10 administrative organs designated at the end of 2014. The figure 189,000 is the number of documents which contain SDSs.

E. Information which does not jeopardize Japan's national security is not designated as SDS

[Paragraphs 73, 74, 75]

In the Act, it is a requirement to designate SDS as Information which would jeopardize Japan's national security if it is disclosed. Thus, information which would not jeopardize Japan's national security if it is disclosed is not designated as SDS.

However, Article 22 stipulates the penalties about disclosures of information as follows considering the citizen's right to know; persons engaged in publishing or news reporting are not penalized even if they disclose SDSs.

Article 24 stipulates that acquirement of SDSs is punished only when the way and the purpose is illicit. This shows that the scope of application of the penalty is narrowed.

Those two articles (Article 22 and 24) are illustrated in the official commentary on the Act and the commentary is available online.

F. Freedom of expression and speech is guaranteed in the Constitution of Japan

[Paragraph76]

Starting with freedom of speech, freedom of expression is a fundamental human right guaranteed in the Constitution of Japan and the Japanese Government takes it for granted that we highly respect these fundamental human rights.

6. Hate Speech

[Paragraph 53]

The sentence in paragraph 53 that states "According to the report, there were 1,152 demonstrations in 29 prefectures across Japan targeting specific races and ethnicities from April 2012 through September 2015" should be modified as follows:"According to the report, there were 1,152 demonstrations in 29 prefectures across Japan held by associations which have been pointed out by the media as having conducted demonstrations with hate speech from April 2012 through September 2015."

This is because the description relating to the demonstrations in the report as targeting specific races and ethnicities is incorrect. The demonstrations were held by associations which have been pointed out by the media as having conducted demonstrations with hate speech.

7. Election Campaigns

[Paragraph 57]

With regard to the election campaign in Japan, the Public Offices Election Act limits the period of election campaigns and establishes certain rules for the means of campaigning so that the election campaign is carried out under the same conditions for fairness in elections.

Restrictions on the election campaigns have been set by law after deliberate discussions among the political parties and the Diet, and by making such efforts from the past, they have been able to formulate the current rules.

The restrictions on door-to-door visits and distributing electoral documents exemplified in the draft report are restricted by the following reasons:

(a) door-to-door visits are likely to become a hotbed for activities such as acquisition and profit induction, and have the harmful effect of disturbing the peace; and

(b) the use of unlimited documents increases expenses and labor, and leads to unfairness due to differences in economic power.

The Supreme Court has decided that restrictions on election campaigns in our country are necessary and reasonable to ensure the freedom and fairness of the elections and that those restrictions do not violate provisions on guarantee of suffrage and freedom of expression in the Constitution of Japan. The Supreme Court has also decided that the restrictions do not violate Article 19 and Article 25 of the International Covenant on Human Rights on Civil and Political Rights. For this reason, the Special Rapporteur's indication of "unnecessary and disproportionate" restrictions is inappropriate.

Although the Special Rapporteur pointed out that the Human Rights Committee has called our country's attention to the need to repeal legislation imposing unreasonable restrictions on political campaigning, this call to attention had been deleted in the concluding observations on the sixth periodic report of Japan of 2014, which is the most recent concluding observations of the Committee, in response to the countermeasures of the Japanese government in the sixth periodic report of 2012. The Special Rapporteur should take full account of such circumstances.

Regarding political activities, they are basically free as long as they do not involve a campaign movement.

In addition, as we stated earlier, the Special Rapporteur's assertion that political fairness stipulated in the program rules has been putting pressure on Japan's journalism is not true as it is based on a misunderstanding of the careful application of the Broadcast Act and its basic framework of autonomy and independence of broadcasters, and therefore we request deletion or correction of the related descriptions.

[Paragraph 71]

As mentioned in the paragraph referring to the 57, the Special Rapporteur's indication of "unnecessary and disproportionate" restrictions is inappropriate, and restrictions on election campaigns in our country do not violate international human rights law. We strongly urge the Special Rapporteur to delete this description.

8. Demonstrations

[Paragraphs 58, 59]

The report pointed out that there are "concerns about unnecessary restrictions on protest"; however, in Japan, freedom of expression is widely guaranteed to the maximum extent, and there are no grounds for such concerns.

Although the report also pointed out that there are reports on "disproportionate restrictions on protest activities taking place in Okinawa" and "excessive use of force and multiple arrests," these allegations are not based in fact. The authorities have merely taken legitimate and necessary measures only in such cases when any illegal activities are confirmed or when there is a risk of such activities. As for the protest activities taking place in the Henoko district in Nago City and the Takae district of Higashi Village in Okinawa Prefecture, some protesters commit obstructive behaviors that are dangerous and illegal such as going under a car, running out in front of a moving car, or parking their cars in a manner that obstructs other vehicles. Their behaviors create dangerous situations that will possibly lead to traffic accidents. In addition, during the protests, there have been many cases in which the performance of official duty is obstructed, including instances where the protesters assaulted police officers on duty maintaining public order.

Under such circumstances, the police authorities take minimum required security measures in an appropriate manner, in light of ensuring safety and maintaining orders on the ground. The police have never used excessive physical force. If illegal acts are confirmed in the process, we appropriately address the situations according to relevant laws and regulations by taking necessary measures including making arrests.

The reference to "credible reports of excessive use of force and multiple arrests" is incorrect. There are no facts that the Japan Coast Guard has committed excessive use of force against protesters, or arrested protesters with regard to public demonstrations at the sea in Henoko, Okinawa. (There is only one case that Japan Coast Guard officers arrested a protester but not with excessive use of force. He was initially captured by the U.S. Military Police as he invaded into the restricted area of Camp Schwab and handed over from them based on the "Act to Provide for the Special Criminal Act Pertaining to the Enforcement of the Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan" on April 1, 2016.)

The Japan Coast Guard never denies safe and legal public protests. Almost all protesters undertake safe and legal protest activities. Nevertheless, there has been behavior by some protesters that cannot be overlooked, such as invading areas of the sea that are restricted by law, sailing *zigzag* at high speed, diving into the sea in the vicinity of construction sites in such a dangerous manner that it could lead to a fatal accident, and clinging to workboats.

Accordingly, the Japan Coast Guard has implemented minimum measures necessary to restrain dangerous or illegal acts in order to protect the lives of and prevent injury to the protesters and the construction staff. Therefore it is not the excessive use of force.

As for the reference to "concerns about the recording of protesters," the police do make video recordings as a part of police activities, but this is merely for the legal and proper execution of duties to preserve necessary evidence, and is conducted only in cases where illegal acts occurred or such acts are highly likely to happen. The police do not record every single protest, nor do they intend to record the substance of protests or conduct investigations on their participants. We have seen many incidents where protesters obstruct official duties by assaulting a police officer who is patrolling on the site. When such an illegal act happens, the police give repeated warnings and take necessary measures including the recording of video footage.

There are no facts pertaining to excessive use of force against journalists filming the protests.

The reported case is probably the case on January 20, 2019. In this case, the protest boat ignored repeated instructions and warnings by the Coast Guard officers and committed dangerous acts such as approaching a construction site. As such, the Coast Guard officers moved the protest boat to a safe place to secure the safety of the protest boat and construction workboats.

At that time, a woman on the protest boat was standing in an unstable position to take a video while holding a large camera with both hands. Part of her body even protruded from the boat. It was such a dangerous situation that might lead her to falling into the sea. As such, the Coast Guard officer kept her body to prevent the woman from falling into the sea. There was no fact that the officer used excessive force against the woman.

In this process, the Japan Coast Guard found no injury on her, and received no claim that she was injured from her.

Also, the Japan Coast Guard was not charged with this case.

As for the "concerns on the failure to deal with those who interfere with protests from the right-wing of the political spectrum," although the details of these concerns are not entirely clear as the topic was not touched upon at the meeting with the Special Rapporteur, generally speaking, the police takes appropriate security measures in regard to all protests in light of preventing any problematic incidents and from the perspectives of neutrality and equality, regardless of protester's claims.

As for the reference to "allegations of surveillance of the Muslim community," we believe this is based on a factual misunderstanding. In fact, the police do not monitor the Muslim community. It is true that the police collect information on Islamic extremists, as Japan faces the threat of terrorism by Islamic extremist organizations as evident from the series of recent overseas incidents involving Japanese citizens. However, this does not mean that the police conduct surveillance of the Muslim community.

Moreover, although the report says "I shared these concerns with members of the National Police Agency," the Government of Japan requests to note that the National Police Agency does not have any concerns on this particular claim, as the claim is based on factual misunderstanding. We explained this to the Special Rapporteur at the meeting held on April 18th last year.

As for the point that "careful review processes must be in place to avoid abuses," the Prefectural Police and the Japan Coast Guard have a mechanism for review of their measures, and have established a careful review process.

To ensure the democratic administration and the political neutrality of the police, a Prefectural Public Safety Commission, consisting of three or five external experts, is established in each prefecture. They supervise the Prefectural Police from the perspective of a third-party. The Prefectural Public Safety Commission receives document-based complaints against police officer's performance, handles them faithfully, and informs the complainants of results according to the Police Act.

When the Prefectural Public Safety Commission receives the complaint, they instruct relevant departments of the Prefectural Police to investigate the facts and take measures based on the results.

In the case that the Prefectural Public Safety Commission receives a complaint by phone or e-mail, the Prefectural Police also handles them faithfully in conformity with relevant regulations required by the Police Act, and utilizes them for improving their service.

When any illegal or unjust act by a police officer is confirmed in the process of an investigation of complaints, the inspection department of which manager is appointed by the National Public Safety Commission, which is also a third-party organization, makes investigations and imposes disciplinary punishment on the officer(s) concerned in light of the situation. The department informs the Prefectural Public Safety Commission of the results of the investigation and any punishment to be administered. In this process, the Prefectural Public Safety Commission may give the Prefectural Police concrete instructions on the investigation method or the details of the punishment if necessary.

As mentioned above, the Prefectural Public Safety Commission, supervises complaints handling by the Prefectural Police as well as investigations/punishment by the inspection department as a third-party organization. Therefore the implementation of the careful review process of the police is fully guaranteed to take place.

The Japan Coast Guard has a mechanism to review its measures, and has established a careful review process.

For example, the Japan Coast Guard accepts opinions on its Web site, and there is a mechanism for listening to a wide range of public opinion to accept advice and receive complaints about Coast Guard administration.

When the Japan Coast Guard receives a complaint, the Japan Coast Guard investigates the reported fact and reviews it. Additionally it is possible to file a criminal charge or accusation against action taken by the Japan Coast Guard based on the Code of Criminal Procedure. It will be decided according to the investigation whether the Public Prosecutor's Office indicts our agency staff in this case. If the Public Prosecutor's Office decides not to prosecute and an objection is made, it is possible to appeal and request a ruling from a Prosecution Committee formed of third parties.

[Paragraph 60]

Comment on L.4 – L.6

With regards to the charges, the place where Mr. Yamashiro assaulted an official of the Okinawa Defense Bureau was not at Camp Schwab in the Henoko area of Nago but on a construction road used for relocation of the helicopter landing zone in the Northern Training Area of the U.S. forces.

He was charged with obstructing the public duty of an official of the Okinawa Defense Bureau working at the site and inflicting injury on the official that required two weeks' treatment.

In addition, he was also charged with obstructing relocation work forcibly by piling up approximately 1,500 concrete blocks in front of the construction gate of Camp Schwab in the Henoko area of Nago.

Comment on L.8 – L.12

Mr. Yamashiro was arrested and detained not for public protest or dissent but for his illegal behavior including the assault on the official.

The police have arrested Mr. Yamashiro three times since October 17, 2016. Apart from the on-the-spot arrest, the other two arrests were conducted with arrest warrants issued by a court judge who confirmed that there was probable cause enough to suspect that he had committed crimes and determined that it was necessary to arrest him.

The on-the-spot arrest was conducted in accordance with Article 213 of the Code of Criminal Procedure, and the arrests based on arrest warrants were conducted in accordance with Article 199 of the Code.

With regards to the detention of Mr. Yamashiro, the court found there was probable cause to suspect that he has committed crimes and necessity for detention, and issued the detention warrants. Furthermore, after the prosecution, the court found there was special necessity to continue the detentions, and decided to extend the period.

The detentions were conducted in accordance with Article 207 and Paragraph 1, Article 60 of the Code of Criminal Procedure. The renewal of the detentions period was conducted in accordance with paragraph 2, Article 60 of the Code of Criminal Procedure.

As described above, all the concerned authorities responded to Mr. Yamashiro's illegal activities appropriately and in accordance with relevant laws and regulations, fully respecting due process.

[Paragraph 72]

Comment on L.5 – L.7

In Japan, freedom of expression, including the right to hold demonstrations, is guaranteed by Article 21 of the Constitution of Japan. It constitutes the political foundation of a democratic nation and is one of the most important fundamental human rights of the citizens, and therefore cannot be restricted unjustifiably even by law. The government does not impose penalties on protesters if they protest or dissent in accordance with relevant laws and regulations.

Although the details of the concern about "the pressures placed on public protest in Okinawa" is not entirely clear, under circumstances of public protest, the police take minimum required security measures in an appropriate manner in light of ensuring safety and maintaining orders on the ground. The police have never used excessive physical force. If illegal acts are confirmed in that process, we appropriately address the situations according to relevant laws by taking necessary measures including making arrests.

[Paragraph 76]

The words in paragraph 76 "the courts." should be deleted.

This is because that court in Japan is an organization to apply law to specific cases, not to declare supportive policies and statements.

9. Conclusion

The Government of Japan has consistently upheld basic values such as fundamental human rights, freedom and democracy including freedom of expression and made ceaseless efforts toward their realization. The Government of Japan intends to continue dialogues with the Special Rapporteur in order to facilitate the understanding on the actual situation of Japan and requests once again the Special Rapporteur to take into consideration and reflect the aforementioned information provided by the Government of Japan in preparing the final report. The Government of Japan believes that only this will lead to foster a trusting relationship between us toward the guarantee of freedom of expression.